

SIEMENS

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PATENT

Attorney Docket No. 2001P13794WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	D. Fischer, et al.)	Group Art Unit: 2121
)	
Serial No.:	10/763,786)	Examiner: Chang, Sunray
)	
Filed:	01/23/2004)	

Title: PROCESS CONTROL SYSTEM WITH A CHARGING FUNCTION

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APPELLANT'S BRIEF UNDER 37 CFR 41.37

Sir:

This brief is in furtherance of the Notice of Appeal filed herewith and in response to the final rejection in this application mailed on August 29, 2006.

Please proceed to the following page.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in this Appeal is the assignee of the present application, Siemens Aktiengesellschaft.

2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)

Claims 1 – 14 are pending in the application. No claims have been withdrawn or cancelled. All of the claims 1 – 14 have been finally rejected and are the subject of this appeal. A copy of the claims is attached hereto in the Claims Appendix. Appellant respectfully appeals the final rejection of claims 1 – 14.

4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)

No amendments have been filed subsequent to the final rejection.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)

In the past customers have paid a price for the supply and installation of process control systems (page 1, lines 14-16) - normally a purchase price at the time of delivery which covers both hardware and software (page 1, lines 34-37). According to the invention, a process control system can be adapted flexibly to meet the customer's requirements while reducing high investment costs, especially the costs of software components and license payments. See page 2, lines 5-10.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

According to one embodiment, a payment figure (W) may be based on actual use, such that a processing unit (10) determines the payment figure (W) from operations (8) running in the process control system. The customer can be equipped with a specific software program which on one hand allows him to execute particular functions but on the other hand also obliges him to pay the corresponding "dynamic" usage-dependent payment figure that arises. The customer pays based on actual use. See page 2, lines 15-27.

Generally, the present invention provides a process control system and a method for determining a payment figure in a process control system. Such a process control system can be flexibly adapted to a customer's requirements and reduce investment costs, especially costs of process control software and associated license fees. With reference to the subject matter of the two independent claims, two exemplary embodiments of the invention are now illustrated in more detail.

According to independent claim 1, such a process control system (5) [page 9, line 1] includes a processor unit (10) [page 9, line 4] adapted to determine a payment figure (W) [page 9, line 5] from operations (7) [page 9, line 6] running in the process control system (5) regarding the creation or removal of a process control function (8) [page 11, lines 13-19] or regarding a user activity (7) or regarding an execution of an automation function(7) [page 9, lines 7-18]. For example, a control algorithm may be run in order to regulate a component 45 such as a motor or a pump. See page 11, lines 15-19.

According to independent claim 14, a method for determining a payment figure (W) in a process control system (5) [page 9, lines 1-5] includes the steps of providing a processor unit (10) adapted to record the creation and/or removal of a process control function (8) and an execution of an automation function (8, 40) [page 10, lines 30-34]; providing a device (computer 15) adapted to record a user activity (7); and determining a payment figure (W) by the processor unit (10) using recorded data (55 or 60) of the preceding steps.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

**6. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR
41.37(c)(1)(vi)**

Claims 1, 3, 5, 7 and 9-14 have been rejected under Section 102 based on U.S. application 20040204775 (referred to herein as the Keyes reference); and dependent claims 2, 4, 6 and 8 have been rejected under Section 103 based on the Keyes reference in view of 200310144746 (referred to herein as the Hsuing reference).

7. ARGUMENT 37 CFR 41.37(c)(1)(vii)

**APPELLANTS TRAVERSE ALL REJECTIONS BASED ON THE KEYES
REFERENCE ALONE OR IN COMBINATION WITH THE HSUING REFERENCE.**

**7A. ALL OF THE REJECTIONS ARE IMPROPER FOR AT LEAST TWO
SEPARATE AND INDEPENDENT REASONS.**

As now summarized, the rejections are deficient for at least the following two separate and independent reasons, which each render the rejections improper:

1. The Appellants traverse all of the claim rejections under 35 USC 102(b) and 35 USC 103 because each of the rejections relies on the Keyes reference and the Keyes reference is not prior art. None of the art of record compensates for this deficiency.

2. The Appellants also traverse all of the claim rejections under 35 USC 102(b) and 35 USC 103 because, even if the Keyes reference were prior art (i) the Keyes reference fails to disclose each and every element as set forth in the independent claims 1 and 14, rendering the rejections under Section 102 improper; and (ii) neither the Hsuing reference or any other art of record can compensate for deficiencies in the Keyes reference. Therefore, all of the rejections under Sections 102 and 103 would be erroneous if the Keyes reference did qualify as prior art.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

7B. PATENTABILITY OF EACH CLAIM SHOULD BE SEPARATELY CONSIDERED.

All claims have been rejected, either solely on the Keyes reference or based on a combination of the Keyes reference with the Hsuing reference. General argument, based on deficiencies of the Keyes reference, demonstrates patentability of all claims. However, the rejected claims do not stand or fall together because each claim defines a unique combination that patentably distinguishes over the art of record. Patentability of each claim is separately argued and should therefore be separately considered. Argument demonstrating patentability of each dependent claim is presented under subheadings identifying each claim by number. The Board is requested to consider each argument presented with regard to each dependent claim because each of the claims further distinguishes over the prior art.

7C. ARGUMENT ONE: THE KEYES REFERENCE IS NOT PRIOR ART

The present application has a priority date of August 7, 2001. All of the rejections are premised on an incorrect conclusion that the US Provisional Application 60/273,164 (the '164 application) can be used to establish a prior art date of March 1, 2001 for certain subject matter disclosed in the Keyes reference. However, for reasons now presented, the '164 application cannot form a valid basis for defining the Keyes Reference as prior art for purposes of rejecting the claims on appeal. There is no basis to accord the subject matter, which the examiner relies upon in the Keyes reference, an effective prior art date earlier than Appellants' priority date of August 7, 2001. Moreover (and as more fully discussed in argument presented in Section 7E), aside from subject matter common to both the Keyes reference and the '164 application, no other subject matter in the Keyes reference can be accorded the prior art date of March 1, 2001. Accordingly, no other subject matter in the Keyes reference can be used to reject the claims under Section 102 or Section 103.

The Keyes reference is a CIP of Ser. No. 10/123,445 which is a CIP of 09/953,811 (published as US20020077711), which claimed the benefit of the '164 application. Relative to the Keyes reference, Ser. No. 10/123,445 is a "parent" application and Ser. No. 09/953,811 is a

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

"grandparent" application, while the Keyes reference is a "child" application relative to Ser. No. 10/123,445. Ser. No. 09/953,811 was filed within one year of the filing date of the '164 application and claimed the benefit of the filing date of the then co-pending '164 application.

Paragraph [0001] of the Keyes reference states (i) that the grandparent application (09/953,811) claims the benefit of the '164 provisional application under 35 U.S.C. 119(e); and (ii) that the Keyes reference incorporates the '164 application by reference.

In response to a request for reconsideration, the Advisory Action mailed October 18, 2006, states that the

"prior art [i.e., the Keyes reference] claims priority directly to provisional application, not in chain by another nonprovisional application."

This is not possible and page one, Par. [0001] of the Keyes reference certainly does not support the examiner's contention. The Keyes reference cannot claim priority directly from the '164 provisional application because the filing date of the Keyes reference is March 11, 2004, more than one year after the filing date of the '164 application.

In addition, the following two fatal deficiencies each prevent according the Keyes reference a prior art date based on the '164 application:

- 1. Not all applications in the Chain of Continuations contain the subject matter relied upon to reject the Claims.**
- 2. The chain of continuations spanning from the '164 application to the Keyes reference lacks continuity of inventorship.**

These deficiencies are more fully discussed herein. As already noted, the Keyes reference does not have a filing date within one year of the filing date of the '164 application. Therefore, any basis for establishing that the Keyes reference is prior art based on the '164 application must comport with legal requirements for continuity of subject matter and continuity of inventorship – throughout the chain of the continuations which relate back to the '164 application. The relevant continuation chain does not comply with the continuity of subject matter and inventorship requirements that must be met in order to establish an effective prior art date of March 1, 2001.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

7C(1). Not all applications in the Chain of Continuations contain the subject matter relied upon to reject the Claims.

In order for certain subject matter in the Keyes reference to be accorded the filing date of the '164 application (i.e., a prior art date for the purpose of rejecting Appellant's claims), every application in the chain of applications extending back to the '164 provisional application must either expressly disclose the same subject matter relied upon to reject the Appellants' claims, or must have expressly incorporated by reference the same subject matter. See, for example, MPEP 2136.03, IV.

Rejections based on priority must be in accord with applicable requirements under Sections 119 and 120. These provisions require that, to establish the earlier effective date, each of the applications in the continuation chain, beginning with the parent, must support the subject matter present in the child. The present discussion, while consistent with Sections 119 and 120, is adapted to address the examiner's position in the final office action: that subject matter cited in '164 provisional application is the subject matter brought forward to form the basis for the rejection. Accordingly, the mischaracterization of the Keyes reference is confirmed by showing that subject matter relied upon in the '164 provisional application was not brought forward in every application in the chain of continuations.

This "reverse" approach is needed because Appellants cannot find in the Keyes reference all of the subject matter which the examiner contends is present. That is, the rejection names some features present in the Keyes reference, but these features are not equivalent to features in the rejected claims. The rejection recites or paraphrases other claimed features as though they are present in the Keyes reference, but these other features cannot be found in the Keyes reference. On the other hand, the examiner has identified with clarity and certainty the subject matter in the '164 application which is relied upon as a basis to accord the Keyes reference a prior art date. The error in the rejection is identified by demonstrating the absence, in one of the intervening applications, of subject matter clearly identified and relied upon by the examiner in the '164 provisional application.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

Specifically, the Office Action mailed 08/29/06 states that subject matter in the Keyes reference which is cited by the examiner to reject the claims is disclosed in the '164 provisional application at page 57, lines 21-29. Appellants cannot agree that the cited subject matter is the same as the subject matter relied upon in the Keyes reference. This is because the Appellants cannot find subject matter in the Keyes reference which can sustain a rejection under Section 102. Nonetheless, the issue at hand is whether (with respect to the subject matter disclosed at page 57, lines 21-29 of the '164 application) the continuation chain was broken because at least one application in the chain of applications fails to recite or incorporate by reference subject matter relied upon for the rejection. For the Keyes reference to be accorded a prior art date, each continuation in the chain must provide support for the subject matter which forms the basis for the rejection.

The cited passage from the '164 application (page 57, lines 21-29) was reproduced in the 08/29/2006 office action. Based on underscoring inserted by the examiner, it appears that the examiner is relying at least on the following excerpt:

"... plants may pay on a per usage basis or on some other predetermined fee schedule for use of the remote monitoring facility 910."

As explained in MPEP 2163.03, in order to carry back a 102(e) critical date to the filing date of a parent application, there must be a right to the earlier date under 35 USC 119 or 35 USC 120 and the prior application must support the claimed invention as required by Section 112. The above-quoted subject matter is not disclosed in the grandparent application (i.e., CIP 09/953,811). Absence of the requisite disclosure in CIP 09/953,811 breaks the continuity of subject matter which must exist to accord the Keyes reference a prior art date of March 1, 2001. It has been incumbent upon the examiner to demonstrate that the above-quoted subject matter is present in each of the applications in the chain of continuations. This burden has not been carried and the record is devoid of any effort to demonstrate presence of this subject matter in CIP 09/953,811. Rather, this issue has been side-stepped, with the advisory action stating that the Keyes reference claims priority directly to the '164 provisional application. As noted above, this is not possible. Consequently, the quoted subject matter cannot be relied upon to grant the

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

child application (i.e., the Keyes reference) the filing date of the '164 application for prior art purposes (i.e., to reject the claims on appeal under Section 102(e) and Section 103).

The intervening grandparent application, CIP 09/953,811 filed Sept. 17, 2001, does not support the above-quoted subject matter which the Examiner asserts to be present in the Keyes reference. With regard to these deficiencies, see, specifically, MPEP 2136.03 (d) which states:

"In order to carry back the 35 USC 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the US patent reference must have a right of priority to the earlier date under 35 USC 120 ... and the parent application must support the invention claimed as required by 35 USC 112, first paragraph."

See, also, example 2 in MPEP 706.02(f)(1) which notes that the earlier filed application must have proper support for the subject matter under Section 119(e) or Section 120.

7C(2). The chain of continuations spanning from the '164 application to the Keyes reference lacks continuity of inventorship.

A second reason that the Keyes reference cannot be accorded the benefit of the earlier filing date of the '164 provisional application is that no one inventor is named as an inventor on all of the applications in the chain of continuations. 35 USC 119(e)(1) does not permit the Keyes reference to be accorded the filing date of the '164 provisional application because the Keyes reference does not name as an inventor any inventor named in the provisional application. See, also, 35 USC 120 which states that an application filed by an inventor named in a previously filed and copending US application will have the same effect as to the invention as though filed on the date of the prior application. None of the inventors named in the Keyes reference are among the three inventors named in the '164 application.

In summary, there are two deficiencies which preclude qualification of the Keyes reference as prior art. The intervening grandparent CIP Ser. No. 09/953,811 does not satisfy the requirement under Section 112 for disclosing subject matter which forms a basis to reject the claims; and the chain of continuations from the Keyes reference to the provisional application '164 does not include requisite continuity of at least one inventor.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

7D. ARGUMENT TWO: EVEN IF THE KEYES REFERENCE WERE PRIOR ART, IT COULD NOT FORM A VALID BASIS FOR REJECTING THE CLAIMS UNDER SECTION 102.

With respect to claims 1, 3, 5, 7 and 9-14 rejected under Section 102, MPEP §2131 provides that a claim is anticipated only if each and every element as set forth in the claim is found. The elements must either be expressly or inherently described in a single prior art reference. The identical invention must be shown in as complete detail as contained in the claim.

Even if the Keyes reference was found to be prior art, the rejection would nonetheless be deficient, as the Keyes reference does not contain every element and limitation recited in the independent claims. Neither the Keyes reference nor the provisional '164 application disclose or suggest the claimed subject matter.

A feature clearly absent from the Keyes reference, yet expressly required by independent claim 1 is:

“a processor unit adapted to determine a payment figure ...”

The final rejection identifies a “processor unit” in the Keyes reference, but this alone is not the claimed invention. There is no disclosure in the reference which would teach or suggest that the processor unit is “adapted to determine a payment figure.” Moreover, although the Keyes reference suggests at page 16, par [0114] that a fee may be charged, the reference is devoid of any disclosure relating to using “a processor unit ... to determine a payment figure ...” A related feature also absent from the Keyes reference and expressly required by independent claim 14 is the step of “determining a payment figure by the processor unit ...” Further, claim 14 requires:

“providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function”

and

“providing a device adapted to record a user activity ...”

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

This combination is absent from the Keyes reference. The final rejection suggests that the mere illustration of a database in Fig.3 or of a list of services in Fig. 2 would meet the terms of "providing a device adapted to record a user activity ..." but there is no support for this in the disclosure of Keyes et al. It is only in hindsight view after reading Appellants' disclosure that the claimed features are being inferred from the reference. The reference does not expressly show and does not teach or suggest the claimed invention.

In contrast to these claimed features, the Keyes reference only discloses that

"a service provider could, for a fee, provide a service ..." [see page 16, par. 0114, line 5]

and that

"[of] course, the service provider may charge a fee for any or all of collecting the data, running the computer model ... [see page 16, par. 0114, lines 27-32]"

This is not the claimed invention. There are many ways to charge fees, e.g., a monthly flat fee. No where does the Keyes reference disclose or suggest the invention set forth in claims 1 and 14. Specifically, the Keyes reference does not disclose or suggest charges on a usage basis or a processor which functions to calculate such charges. Further distinctions now follow.

Independent claim 1 also includes the feature of determining a payment figure based on operations running in the process control system

"regarding the creation or removal of a process control function or
regarding a user activity or
regarding an execution of an automation function."

None of these features are disclosed by or inherently present in the Keyes reference. The final rejection has referenced various passages which purportedly disclose the claimed subject matter but the claimed subject matter is not disclosed in these citations.

Independent claim 14 also includes the feature of adapting a processor unit:

"to record the creation and/or removal of a process control
function and an execution of an automation function ..."

This feature is not disclosed by or inherently present in the Keyes reference.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

Two other features of claim 14 absent from the Keyes reference are the steps of :

providing a device adapted to record a user activity; and
determining a payment figure by the processor unit using recorded data of the
preceding steps.

As already noted, the Keyes reference does disclose that “the service provider may charge a fee for any or all of collecting the data, running the computer model ... [see page 16, par. 0114, lines 27-32]” but this is not the same as what Appellants have claimed. It is only the Appellants who disclose providing a device adapted to record a user activity as part of a “method for determining a payment figure in a process control system.” And it is only the Appellants who disclose determining a payment figure by the processor unit using recorded data of the preceding steps.

For all of these reasons, there is insufficient basis to sustain the rejections of independent claims 1 and 14 and the claims which depend therefrom.

**7E. ALL SUBJECT MATTER IN THE KEYES REFERENCE USED TO REJECT THE
CLAIMS MUST SATISFY THE REQUIREMENTS OF SECTIONS 119 AND 120 TO
QUALIFY AS PRIOR ART.**

As discussed in Section 7C(1), for certain subject matter in the Keyes reference to be accorded a prior art date based on the ‘164 application, the same subject matter must be present in, or incorporated by reference into, every application in the chain of applications. It has also been urged that, even if the subject matter found in the Keyes reference was found to be prior art, the rejection would still be deficient because the Keyes reference does not contain every element and limitation recited in the independent claims.

Now, even if the Keyes reference were found to contain every element and limitation recited in the independent claims, no such subject matter can be accorded a prior art date of March 1, 2001 unless it is also present in the ‘164 application and every intervening application in the continuation chain. So far, the only subject matter identified in the ‘164 application as support for rendering the Keyes reference prior art is the passage at page 57, lines 21-29.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

It has already been argued that numerous features present in the independent claims are not disclosed in the Keyes reference. To the extent the examiner might be able to show that a claimed feature is present, an additional burden that must be carried to sustain the rejections: There must also be a showing that same feature is present throughout the continuation chain extending to the '164 application. Merely showing that some subject matter is carried forward from the '164 application to the Keyes reference does not establish that all of the subject matter relied upon in the Keyes reference is prior art. The Keyes reference is a CIP of a CIP which, on its face, calls into question the effective prior art date of every single feature or concept disclosed in that reference.

The significance of this point becomes apparent when comparing text at page 3, paragraph [0025] of the Keyes reference with text at page 11, lines 8-18 of the '164 application. Both passages discuss lack of interconnection, but it is the cited passage in the Keyes reference which discusses a lack of interconnection between "process control systems 14 and the business systems 35,36 ..." The citation from the '164 application only discusses a lack of interconnection between "process control systems 12 and 14 and the power generating and maintenance systems 22 and 26 ..." Absent a finding of support elsewhere in the '164 application, the cited passage from the Keyes reference does not qualify as prior art to suggest inter-connection of process control systems and the business systems. In the absence of such other support in the '164 application, there is no prior art basis in the Keyes reference for finding the following feature of claim 1:

"a processor unit adapted to determine a payment figure from operations running in the process control system ..."

Appellants have already argued that this feature is not disclosed in the actual passage relied upon by the examiner at page 5, par. [0040]. Now, it is further urged that there is no support in the '164 application for establishing a prior art date for the above-quoted claimed subject matter. Thus there is a second distinct reason why claim 1 cannot be rejected under Section 102: the subject matter relied-upon to meet the above-quoted claim language is not prior art.

To sustain any one of the 14 claim rejections it is incumbent upon the examiner to clearly demonstrate that the subject matter relied-upon is prior art. Review of the '164 application leaves

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

great doubt that subject matter essential to rejecting each of the claims based on the Keyes reference can be mapped to the prior art document on which the prior art date is based. The examiner has not met this burden for any of the rejections and it does not appear that the requirement can be met. The only text which the examiner has cited from the '164 application is at page 57, lines 21-29, and this is not, by itself, sufficient to reject any of the claims.

As another example, see claim 3 which requires that

“at least a part of the operations running in the process control system run on the field device.”

The examiner cited page 1, par. [0003] of the Keyes reference to support a finding of this feature but no comparable passage in the '164 application has been identified. The subject matter at page 1, par. [0003] does not disclose such a field device (because Appellants' claimed field device cannot be a valve, valve positioner, switch or transmitter such as described in the cited passage) and even if it did, the rejection is deficient because there is no passage in the '164 application on which to establish a prior art date for this same subject matter.

As still another example, see claim 5, which requires that the further components of claim four

“comprise field devices for monitoring and control of components of a technical system that are connected by radio communication and/or by a fixed link to the process control computer ...”

In rejecting claim 5 under Section 102, the examiner cited the Keyes reference at page 3, par. [0024] for disclosing “over-the-air links” but, there is no support for such in the '164 application. Note, for example, that discussions on how a computer system may be communicatively connected, found in the '164 application at the last paragraph on page 11 and at the first paragraph on page 12, are devoid of disclosure relating to radio communication.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

7F. EACH OF THE DEPENDENT CLAIMS FURTHER DISTINGUISHES THE INVENTION OVER THE PRIOR ART.

Each of the claims depending from Claim 1 further distinguishes over the prior art. Neither the Hsuing reference nor any other art of record can compensate for the deficiencies present in the Keyes reference.

7F(1). Claim 2 is Patentably Distinct over the combination of Keyes in view of Hsuing.

Claim 2 further distinguishes the invention over the art of record because it includes a combination requiring, as an additional feature, a "process control computer" and "a client computer ... wherein at least a part of the operations running in the process control system run on the process control computer." None of the art of record teaches or suggests the combination of Claim 2.

7F(2). Claim 3 is Patentably Distinct over the Keyes reference.

Claim 3 further distinguishes the invention over the art of record because it includes "at least one field device for automation of at least one system component, wherein at least a part of the operations running in the process control system run on the field device." None of the art of record teaches or suggests the combination of Claim 3.

7F(3). Claim 4 is Patentably Distinct over the combination of Keyes in view of Hsuing.

Claim 4 further distinguishes over the prior art, requiring, among other features, that "the process control computer comprises a Web server and the client computer comprises an Internet browser so that the client computer can influence the operations running in the process control computer." None of the art of record teaches or suggests this combination.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

7F(4). Claim 5 is Patentably Distinct over the Keyes reference.

Claim 5 further distinguishes the invention over the art of record because the further components of claim four "comprise field devices for monitoring and control of components of a technical system that are connected by radio communication and/or by a fixed link to the process control computer ..." None of the art of record teaches the combination of Claim 5.

7F(5). Claim 6 is Patentably Distinct over the Combination of Keyes in view of Hsuing.

Claim 6 patentably distinguishes the invention over the art of record because this combination requires, as an additional feature, that the "communication between the components of the process control system is based on the TCP/IP transmission protocol (TCP/IP)." None of the art of record teaches the combination of Claim 6.

7F(6). Claims 7 and 9-13 are each Patentably Distinct over the Keyes reference.

Each of the claims 7 and 9-13 further distinguishes over the prior art, requiring that "the payment figure is a service fee to be paid by the user of the process control system to an Application Service Provider." None of the art of record teaches or suggests the combinations set forth in these claims.

7F(7). Claim 8 is Patentably Distinct over the Combination of Keyes in view of Hsuing.

Independent Claim 8 is patentably distinct, requiring, for example, that "the process control computer comprises a Web server and the client computer comprises an Internet browser so that the client computer can influence the operations running in the process control computer via the Internet.

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CENTRAL FAX CENTER
NOV 29 2006

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

7G. ALL OF THE CLAIMS SHOULD BE PASSED TO ISSUANCE.

Based on the foregoing, the Final Rejection as applied to every one of the claims is in error. Every one of the claims stands up to all of the art of record. Reversal is therefore requested so the claims may be passed to issuance.

8. APPENDICES

An appendix containing a copy of the claims involved in this appeal is provided herewith. No evidence appendix or related proceedings appendix is provided because no such evidence or related proceeding is applicable to this appeal.

Respectfully submitted,

Dated: 11/29/06

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Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

APPENDIX OF CLAIMS ON APPEAL

1. A process control system, comprising:

a processor unit adapted to determine a payment figure from operations running in the process control system regarding the creation or removal of a process control function or regarding a user activity or regarding an execution of an automation function.

2. A process control system according to Claim 1, further comprising:

a process control computer;

a client computer; and

the Internet, wherein at least a part of the operations running in the process control system run on the process control computer.

3. A process control system according to Claim 2, further comprising:

at least one field device for automation of at least one system component, wherein at least a part of the operations running in the process control system run on the field device.

4. A process control system according to Claim 2, wherein the process control computer comprises a Web server and the client computer comprises an Internet browser so that the client computer can influence the operations running in the process control computer via the Internet, wherein the operations can also include operations by which further operations are initiated in further components of the process control system.

5. A process control system according to Claim 4, wherein the further components comprise field devices for monitoring and control of components of a technical system that are connected by radio communication and/or by a fixed link to the process control computer, wherein the further operations also comprise those operations that are executed in the field devices.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

6. A process control system according to Claim 5, wherein communication between the components of the process control system is based on the TCP/IP transmission protocol (TCP/IP).
7. A process control system according to Claim 1, wherein the payment figure is a service fee to be paid by the user of the process control system to an Application Service Provider.
8. A process control system according to Claim 3, wherein the process control computer comprises a Web server and the client computer comprises an Internet browser so that the client computer can influence the operations running in the process control computer via the Internet, wherein the operations can also include operations by which further operations are initiated in further components of the process control system.
9. A process control system according to Claim 2, wherein the payment figure is a service fee to be paid by the user of the process control system to an Application Service Provider.
10. A process control system according to Claim 3, wherein the payment figure is a service fee to be paid by the user of the process control system to an Application Service Provider.
11. A process control system according to Claim 4, wherein the payment figure is a service fee to be paid by the user of the process control system to an Application Service Provider.
12. A process control system according to Claim 5, wherein the payment figure is a service fee to be paid by the user of the process control system to an Application Service Provider.
13. A process control system according to Claim 6, wherein the payment figure is a service fee to be paid by the user of the process control system to an Application Service Provider.

Serial No. 10/763,786

Atty. Doc. No. 2001P13794WOUS

- 14. A method for determining a payment figure in a process control system, comprising:**
- providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function;**
 - providing a device adapted to record a user activity; and**
 - determining a payment figure by the processor unit using recorded data of the preceding steps.**